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January 21, 2015

VIA ECF AND FAX

Hon. George B. Daniels
United States District Judge
United States District Court
for the Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: *Sokolow, et al. v. Palestine Liberation Organization, et al.* Docket No. 04-CV-397 (GBD)(RLE)

Dear Judge Daniels:

I write to request that the Court enforce—against defendants—its repeated orders on evidence. *First*, the Court has repeatedly held that no evidence is to be offered if it has not been provided to the other side in advance of trial. *Second*, the Court has ordered that each party provide a list to the other party, the day before, of every exhibit the party intends to offer in evidence the next day.

Defendants are attempting to violate these orders. This morning at 7:36 a.m., defendants sent plaintiffs a list and copies of seven new proposed trial exhibits. (See Ex. A hereto). So far as plaintiffs are aware in the few moments we have had to review them, we have never been provided these by defendants.

As for the “day before” rule, defendants have acknowledged that it applies to their exhibits that they wish to use on cross-examination. As late as yesterday afternoon, defendants’ lead trial counsel represented to plaintiffs that defendants would send plaintiffs the materials he plans to use with Eviatar “to refresh or impeach,” and that plaintiffs would “find some of them objectionable.” (See Ex. B hereto)

Defendants failure to provide these materials is a direct violation of the Court’s orders. On January 6, the Court imposed the following rule:

THE COURT: This is the ruling that I’m going to impose, and I impose in cases where I have lawyers who can’t resolve this on their own. I want the other side to have a list, the day before, of every exhibit that you intend to offer

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Hon. George B. Daniels
January 21, 2015
Page 2

in evidence the next day. That is going to be the rule in this trial for both sides. If they have not seen it at least the day before, then it is not coming in by that ruling, okay. Very simple. So my suggestion is that you get it to them early, and you make sure that they have it, and you make sure that they know exactly what is the accurate list. And if I find that you are giving them a list of a thousand exhibits the day before and you are using 10, then I'm going to consider that that is an abuse of the process, and I'm going to think about imposing some sanctions. So let's be reasonable about this.

Tr. (Jan. 6, 2015) at 115 (Ex. C hereto).

Yesterday, the Court was very explicit on this issue:

THE COURT: The thing that is frustrating for me is we laid out what you agreed to, both of you, as the process of how you would be notified of what was going to come in evidence and how you were going to indicate that you have some objection. Neither side did anything consistent with that agreement.

I shouldn't be sitting here on Tuesday morning after a week of trial with this witness already being on the stand three days and I get letters that are showing up an hour before we start court, arguing about whether or not things that are supposed to come in evidence today are going to be admitted.

I'm going to start enforcing this rule without regard to the merits of your argument. You need to tell them as early as possible what it is you intend to use, and they need to tell you as early as possible that they have some objection to it.

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Hon. George B. Daniels
January 21, 2015
Page 3

I'm not listening to any more excuses why you didn't figure it out earlier, and I'm not going to listen to any more excuses from them of why they didn't object to it earlier. I'm going to make the ruling based on who I think has violated that rule. I fault you for giving them notice late, and I fault them for waiting until minutes before we get in the courtroom to try to raise this issue.

Tr. (Jan. 20, 2015) at 723-24 (Ex. D).

Defendants have known for many days that Eviatar's direct examination would be completed yesterday. To send exhibits today that they intend to use is a violation of the Court's orders and should not be allowed.

In addition, in the few minutes I have had to look at the exhibits, they appear to be in direct violation of the Court's order that it will not allow defendants to turn the case into a political circus. Plaintiffs should have adequate time to provide a written objection to these materials.

Respectfully,


Kent A. Yalowitz

cc: All ECF Counsel

Exhibit- A

From: Rochon, Mark [mrochon@milchev.com]
Sent: Wednesday, January 21, 2015 7:34 AM
To: Yalowitz, Kent A.; Romeo, Carmela; Horton, Philip W.; Machnes, Tal
Cc: bhill@milchev.com; Ferguson, Laura; Satin, Michael
Subject: FW: Exhibits for 1/21
Attachments: DTEs.zip

Kent: Attached are some exhibits I may use with Eviatar that you did not use, including a State Department Report (DTE 70), Arafat photos (DTEs 71-74) and maps (DTEs 75-76). One of the maps includes commentary on the right side. I won't be using or moving that portion in front of the jury or with the witness. I may also use a UN Report, which was previously marked as DTE 29. Thanks, Mark

Mark J. Rochon
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Washington, DC 20005
202-626-5819
FAX: 202-626-5801

* * *

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Exhibit- B

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----X

4 MARK I. SOKOLOW, et al.,
5 Plaintiffs,

6 v. 04 CV 397 (GBD)

7 PALESTINE LIBERATION
8 ORGANIZATION, et al.,
9 Defendants.

10 -----X

New York, N.Y.
January 20, 2015
9:30 a.m.

11 Before:

12 HON. GEORGE B. DANIELS,
13 District Judge

14 APPEARANCES

15 ARNOLD & PORTER LLP
16 Attorneys for Plaintiffs
17 BY: KENT A. YALOWITZ
18 PHILIP W. HORTON
19 TAL MACHNES
20 SARA PILDIS
21 CARMELA T. ROMEO
22 RACHEL WEISER

19 MILLER & CHEVALIER, CHARTERED
20 Attorneys for Defendants
21 BY: MARK J. ROCHON
22 LAURA G. FERGUSON
23 BRIAN A. HILL
24 MICHAEL SATIN

23 Also present: RACHELLE AVITAL, Hebrew interpreter
24 RINA NE'EMAN, Hebrew interpreter

25

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1 MR. YALOWITZ: People sometimes need repetition.

2 THE COURT: You can put that indictment in front of
3 them again and read them back the testimony. This witness, my
4 recollection, read directly from the indictment saying who the
5 victims were. You went over that in great detail.

6 MR. YALOWITZ: With Kaufman, yes. The other thing is,
7 frankly, I have a logistical problem. I have 12 copies of
8 these binders. I fairly followed the Court's ruling. What I
9 get on my way to court Monday morning when I'm standing in line
10 at security, I get a letter saying, we don't like this
11 indictment and we want to reargue the Court's ruling.

12 You are the ultimate arbiter of this.

13 THE COURT: The thing that is frustrating for me is we
14 laid out what you agreed to, both of you, as the process of how
15 you would be notified of what was going to come in evidence and
16 how you were going to indicate that you have some objection.
17 Neither side did anything consistent with that agreement.

18 I shouldn't be sitting here on Tuesday morning after a
19 week of trial with this witness already being on the stand
20 three days and I get letters that are showing up an hour before
21 we start court, arguing about whether or not things that are
22 supposed to come in evidence today are going to be admitted.

23 I'm going to start enforcing this rule without regard
24 to the merits of your argument. You need to tell them as early
25 as possible what it is you intend to use, and they need to tell

724

Flkrsok1

1 you as early as possible that they have some objection to it.

2 I'm not listening to any more excuses why you didn't
3 figure it out earlier, and I'm not going to listen to any more
4 excuses from them of why they didn't object to it earlier. I'm
5 going to make the ruling based on who I think has violated that
6 rule. I fault you for giving them notice late, and I fault
7 them for waiting until minutes before we get in the courtroom
8 to try to raise this issue.

9 MR. YALOWITZ: I gave them these documents last week,
10 your Honor. I didn't give it to them last minute.

11 THE COURT: Let's move on.

12 MR. YALOWITZ: I don't want to play who struck John
13 here, but I am working real hard to give them as much notice as
14 I can. I was very clear with them as early as I could that we
15 were going to use this document. I gave them the redactions
16 that I thought followed the Court's ruling. The first I heard
17 about it was last night.

18 THE COURT: Mr. Rochon, last word.

19 MR. ROCHON: I disagree with some of that, but we
20 don't need to get into it here. We will both try to abide by
21 the Court's instructions.

22 THE COURT: I'm not going to have 20 side bars every
23 day during this trial because all of a sudden for the first
24 time I hear about an objection.

25 Let's get the jury.

Exhibit- C

1

F16SSOK1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 MARK I. SOKOLOW, et al.,

4 Plaintiffs,

5 v.

04 CV 397 (GBD)

5 PALESTINE LIBERATION ORGANIZATION, et al.,

6 Defendants.

7 -----x

8 New York, N.Y.
8 January 6, 2015
9 11:00 a.m.
9

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge

13 APPEARANCES

14 ARNOLD & PORTER LLP

14 Attorneys for Plaintiffs

15 BY: KENT A. YALOWITZ

15 PHILIP W. HORTON

16 TAL MACHNES

16 SARA PILDIS

17 CARMELA T. ROMEO

18 MILLER & CHEVALIER, CHARTERED

18 Attorneys for Defendants

19 BY: MARK J. ROCHON

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20 MICHAEL SATIN

21
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160SOK2

1 with you. He says it is gonna be a long trial. We are not
2 going to waste the jury's time if we can get through this now
3 and he's got some clear instructions that he is not going to be
4 able to put in prejudicial statement, saying, oh, it's not for
5 the truth, the oldest trick in the book and then say, oh, it is
6 for notice. I have been dealing with this not for the truth,
7 it's prejudicial for 30 years. Everybody pulls the, it is not
8 for the truth, when in fact we all know it is a damaging
9 statement and the most likely interpretation of it is for the
10 truth. So we need to get some clarity here.

11 THE COURT: This is the ruling that I'm going to
12 impose, and I impose in cases where I have lawyers who can't
13 resolve this on their own.

14 I want the other side to have a list, the day before,
15 of every exhibit that you intend to offer in evidence the next
16 day. That is going to be the rule in this trial for both
17 sides. If they have not seen it at least the day before, then
18 it is not coming in by that ruling, okay. Very simple. So my
19 suggestion is that you get it to them early, and you make sure
20 that they have it, and you make sure that they know exactly
21 what is the accurate list. And if I find that you are giving
22 them a list of a thousand exhibits the day before and you are
23 using 10, then I'm going to consider that that is an abuse of
24 the process, and I'm going to think about imposing some
25 sanctions. So let's be reasonable about this. As you can

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116

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1 understand, we are at the point where there is no more guessing
2 and theorizing about this. It is time to make up your mind
3 about what evidence you can reasonably get in before this jury
4 and what you are going to ask the jury to determine.

5 So you should be ready a week from today to know
6 exactly what exhibits you are putting before the jury and how
7 you are going to argue the case, coupled with the guidance that
8 I'm trying to give you, now, with regard to these other issues,
9 and then we'll take a short break.

10 Let me just go to -- I think there was -- remind me.
11 Let me come back. We were supposed to come back to the eight
12 exhibits.

13 MR. ROCHON: Right, eight.

14 THE COURT: Let's go back to that. The statements
15 that I looked at, and I guess I'm looking at the January 5th
16 letter from the defendant. Is that the quotations that you
17 were talking about.

18 MR. SATIN: Yes, this is our exhibits that they have
19 proffered to the Court.

20 THE COURT: My reaction is this. Let me just
21 basically go through your bullet points.

22 (Continued on next page)
23
24
25

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Exhibit- D

From: Rochon, Mark [mrochon@milchev.com]
Sent: Wednesday, January 21, 2015 7:34 AM
To: Yalowitz, Kent A.
Subject: RE: Depositions

Follow Up Flag: Flag for follow up
Flag Status: Flagged

I tried to send last night and they didn't go through. Just sent them in a zip.

From: Yalowitz, Kent A. [mailto:Kent.Yalowitz@APORTER.COM]
Sent: Wednesday, January 21, 2015 7:29 AM
To: Rochon, Mark
Subject: Re: Depositions

Mark,

My memory is not as good as it used to be, but I am really quite sure that yesterday afternoon you said you would send me the materials you plan to use with Eviatar to refresh or impeach and that I would find some of them objectionable.

Do you remember it differently?

Thx.

Kent

On Jan 19, 2015, at 6:10 PM, Rochon, Mark <mrochon@milchev.com> wrote:

Kent: I think 48 hours would suffice, 72 would be better. I think we may have a misunderstanding on today, as we had a clear understanding that we'd get them at least 24 hours before. I understand you disagree. In any event, we will have to address that tomorrow, as we can't get through all the ones you got us today by COB today, making necessary some objections in the morning. Regards, Mark

From: Yalowitz, Kent A. [mailto:Kent.Yalowitz@APORTER.COM]
Sent: Monday, January 19, 2015 5:49 PM
To: Rochon, Mark
Subject: RE: Depositions

Thanks, Mark.

We're still open to coming into an agreement on the timing of disclosure of exhibits and objections earlier than the day before, in order to give our teams a chance to speak to try to resolve objections in advance of the morning of the testimony. Let me know if you have something to propose.

Best,

Kent

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From: Rochon, Mark [<mailto:mrochon@milchev.com>]
Sent: Monday, January 19, 2015 5:32 PM
To: Yalowitz, Kent A.
Subject: RE: Depositions

Kent: I don't think I will be able to get someone from the trial team over there to defend them, so we are likely to go with a deposition in NY the week before they testify. Regards, Mark

From: Yalowitz, Kent A. [<mailto:Kent.Yalowitz@APORTER.COM>]
Sent: Monday, January 19, 2015 2:31 PM
To: Rochon, Mark
Subject: Depositions

Mark--

What did you decide to do about the timing of depositions of the two late-disclosed witnesses? In Israel within the next two weeks, or in NY the week before they testify?

Best,

Kent

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